THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.25720 of 2006

Dated:05.03.2007

Between:

Vedam Krishna Murthy.

...PETITIONER

and

Allur Gram Panchayat, rep. by its Secretary-cum-Executive Officer, Allur Village and Mandal, Nellore District.

...RESPONDENT

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.25720 of 2006

ORDER:

The petitioner is resident of Allur Village and Mandal, Nellore District. He is owner of site in ward No.2 situated at Kacheri Street. It is his case that his mother obtained necessary permission, vide resolution No.133 dated 05.09.1989, from the respondent Gram Panchayat and shop rooms bearing Door Nos.2-12-23/1 to 5 were constructed in 1989. He alleges that the respondent is now taking steps to widen the road without following due process of Law and that the officials of the respondent came to his land with heavy machinery with a view to demolish the shop rooms without due process of Law and without acquiring the land. Therefore, he filed instant writ petition.

At the stage of admission itself, the Panchayat Secretary of respondent Gram Panchyat filed a brief counter-affidavit. Paras 3 and 4 thereof read as under.

> I submit that the street is 33 feet in Kacheri Street and the petitioner has not leave 1.25 meters open place before the shop rooms and he also constructed a platform on the street, after constructing the platform on the street, the street became narrow. As the street became narrow the traffic is not moving freely. One side the petitioner violated the condition No.8 of the building permission granted to him and other side he constructed platform and causing inconvenience public and all.
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> I submit that the question of land acquisition does not arise because he himself encroached the road and does not

leave 1.25 meters open place as per the conditions for his building permission. Suppressing these facts he approached this Hon'ble Court is an innocent. The Gram Panchayat has to take steps to protect roads and to see proper implementation of its resolutions. The petitioner has constructed shop rooms by violating in leaving 1.25 meters of space before the Door No.2-12-23/1 to 5 situated at Kacheri Street, Allur. The Panhcayat will remove the encroachments and will take action in violation of building permission conditions. The petitioner has violated the conditions and encroached the road margin then in the interest of people the Gram Panchayat has to act as per the powers vested with the Panchayat.

The learned counsel for the petitioner placed strong reliance on the decision of this Court in **M.Madhavi Latha v Rajendranagar Municipality**[1] in support of the contention that without due process of Law neither the land can be taken nor the shops can be demolished. **Opposing** the writ petition, the learned standing counsel for the respondent Gram Panchayat submits that the petitioner has encroached upon the road margin and therefore, the decision of this Court in **Madhavi Latha's case** (supra) has no application.

A Division Bench of this Court in **P.Lakshmana Rao v. Executive Officer**[2] issued directions to be followed by Municipal authorities, Panchayat authorities and Revenue authorities for acquiring the land for public purpose. Having regard to the decision of the Division Bench,

I have considered similar issue in a number of writ petitions and culled out various principles of Law to be followed by the Government while acquiring/utilizing the private land for road widening. The principles were reiterated in **Madhavi Latha's case** (supra). The principles laid down by the Division Bench are as follows.

(1). Where a property is required for public purpose viz., widening of roads or for any other purpose, the authorities straightaway cannot take law into their hands and jump into the premises, dispossess or evict the occupants or demolish the property.

(2). If the authorities concerned want to take action for eviction/dispossession of the occupants or demolition, they shall issue 60 days' prior notice notifying as to the nature of the property, the property to whom it belongs and the proposed action calling for explanation/objections, if any, from the occupants. On receipt of such objections, if there is any objection as to the ownership of the property, the authorities

should determine the extent of encroachment or unauthorised occupation and also determine whether the property in question belongs to Government/any other local self Government or authority or the occupants and pass appropriate orders within three months from the date of receipt of the objections, after affording an opportunity of being heard to the occupants.

(3). In case where demolition of private property has already been made, the authorities shall determine the damages on the basis of the assessment to be made by the Engineer of the Roads and Buildings Department and disburse the amount of damages quantified forthwith.

(4). If the demolition is in respect of local bodies' Government property, the question of damages does not arise. In such an event, the occupant shall be entitled to remove the material used for the construction.

(5). In case of demolition of private property, the authorities concerned shall determine the loss caused to the occupants on the basis of the assessment to be made by the Engineer of R&B Department and on such assessment of damages, the concerned authorities shall take appropriate steps to disburse the amount quantified forthwith.

(6). If there is any claim for grant/assessment of the property, the concerned authorities shall consider the same in accordance with law taking into consideration the eligibility and the entitlement of occupants, after making enquiry and till such claim is decided, there shall be status quo obtaining as on today regarding the structures.

Following the decision of the Division Bench and the principles as above, the writ petition is disposed of giving liberty to the respondent to proceed in accordance with Law as laid down by the Division Bench. Till then there shall be *status quo* as on today. No costs.

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(V.V.S.RAO, J)

05th March, 2007
ghn

[1] 2001(2) ALT 482

[2] 2000(5) ALT 246 (DB)